

From: "Lauretta Carter" <lcarter@tech.nn.k12.va.us>
To: <CCBSecretary@fcc.gov>
Date: Tue, Jan 29, 2002 3:03 PM
Subject: Resend: Appeal of Schools and Libraries Division decision and request for waiver of filing deadline for Newport News Public Schools

Following is the text of an email sent yesterday that may have been corrupted during transmission.
Thank you.

Lauretta Carter

Before the
Federal Communications Commission
Washington D.C.

Federal State Joint Board on Universal Service CC Docket No. 96-45

In the Matter of

Appeal of Schools and Libraries Division decision and request for waiver of filing deadline for Newport News Public Schools

Applicant's Form 486 Identifier Number: 166931

Newport News Public Schools requests Federal Communications Commission (FCC) review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company. We seek waiver of the October 28, 2001 deadline for filing FCC Form 486, required for compliance with the Children's Internet Protection Act. We believe there to be sufficient precedent to grant this waiver.

The person who can most readily discuss this appeal with you is Lauretta C. Carter. Her contact information is:

Newport News Public Schools
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Newport News, VA 23606
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The following information is provided from the Synopsis page of the Form 486 Notification Letter:

Funding Request Number: 693776
Form 471 Application Number: 231477
Service Provider Name: Verizon-Virginia, Inc.
Service Provider Identification Number: 143001422
Billing Account Number: 757-247-2300.300 757-926
Service Start Date: 10/31/2001*
Service Start Date Change Explanation: Year 4 CIPA Deadline
Adjusted Funding Commitment: \$117,601.92

The Billed Entity Number from the Form 486 is 126530.

Background

No. of Copies rec'd 0
List A B C D E

In accordance with FCC regulations adopted for E-Rate funding year four, Newport News Public Schools filed a form 486 with the SLD on August 31, 2001 via Certified Mail. In correspondence dated October 22, 2001, SLD returned our Form 486 for failure to meet SLD's "Minimum Processing Standards". This correspondence was received on Friday, October 26, 2001. The nature of this letter indicated:

"The certification in Block 4, Items 11(a) - 11(e), of the FCC Form 486 submitted are all blank. For Funding Year 4 and later Funding Years, Billed Entities must check at least one of the boxes labeled (a) through (e) in Item 11."

After contacting an SLD representative to confirm the appropriate action to be taken in response to this letter, a response was promptly prepared and mailed via certified mail on October 31, 2001. The response included a cover letter and the Form 486 with the corrected Block 4, Item 11.

In correspondence (Form 486 Notification letter) dated December 21, 2001, indicating loss of funding from 07/01/2001 to 10/31/2001, SLD informed us that our corrected Form 486 arrived after the October 28 deadline for CIPA compliance and we would lose E-Rate discounts from July 1, 2001 through the date our corrected Form 486 was postmarked. For the reasons cited below, we ask the FCC for a waiver of the October 28 Form 486 filing deadline.

Discussion

Newport News Public Schools appeals this decision on the following basis. First, the Form 486 was originally filed August 31, 2001 - two months prior to the Year 4 CIPA Deadline of Sunday, October 28, 2001. Unfortunately, SLD failed to timely process our Form 486, waiting until October 22, 2001 to return it to us, leaving insufficient time to correct the form and mail it prior to the October 28 deadline. The Form 486 Return letter was received Friday, October 26, 2001 - eight weeks after the original submission and only 24 hours before the last possible postmark of Saturday, October 27, 2001 prior to the CIPA Deadline.

The FCC has ruled favorably in the past on waiver requests when the SLD failed to timely process applications. In a decision released on August 22, 2000, Council Bluffs Community Schools, Council Bluffs, Iowa (DA 00-1909) was granted a waiver of the Form 470 posting requirement after Council Bluffs made a showing that the SLD failed to timely post their Form 470 which had been mailed to the SLD. Similarly, in a decision released on December 21, 1999, Runnemede Public Schools, Runnemede, New Jersey (DA 99-2957) was also granted a waiver of the 28 day posting requirement because of SLD's failure to timely post a mailed Form 470. In the Runnemede decision, the FCC concluded:

We have reviewed Runnemede's appeal and the materials accompanying it. Runnemede has provided documentation confirming February 26, 1998 as the initial filing date of its FCC Form 470 with SLD. Review of the record also reveals that SLD did not post Runnemede's FCC Form 470 to its web site at that time, nor did it notify Runnemede that it was not doing so. The lack of 28 days posting prior to the filing of Runnemede's FCC Form 471 thus resulted from SLD's failure to timely post the FCC Form 470 in accordance with section 54.504(b)(3) of the Commission's rules. In

light of the fact that SLD's failure to post Runnemede's FCC Form 470 to its web site resulted in Runnemede's non-compliance with the 28 day posting requirement set forth in 47 C.F.R. § 54.504(b)(4), we believe that a waiver of that requirement is warranted.

Given these rulings and the fact that the FCC provided timely notice to the applicant community of the October 28 filing deadline and consequences for failure to comply with that deadline, we feel SLD should have reasonably presumed a significant number of Forms 486 would be filed during the months of August, September, and October and should have had sufficient staff to rapidly process those forms. We also understand state E-Rate representatives raised concerns over timely processing of Forms 486 with SLD during the summer of 2001. As with Runnemede and Council Bluffs, we feel a waiver is warranted in this case.

Telecommunications Exemption

As a second point, the purpose of the October 28 filing deadline was for compliance with provisions of CIPA. Under FCC CIPA regulations, applicants funded for telecommunications discounts need not comply with CIPA regulations, but were required to certify that fact by October 28. We ask the Commission to reconsider this regulation.

When issuing Funding Commitment Decision Letters, SLD identifies the types of services (telecommunications, Internet Access, or internal connections) for which applicants may receive discounts. Under CIPA regulations, applicants are required to certify positive CIPA compliance for Internet access and internal connections and exemption of CIPA compliance for telecommunications services. According to FCC CIPA regulations, the timetable for implementation of a technology measure that blocks access to obscene or child pornographic material does not begin until an applicant receives services for Internet access or internal connections. Recipients of telecommunications services simply certify that CIPA regulations "does not apply because the recipient(s) of service represented in the Funding Request Numbers(s) on this Form 486 is (are) receiving discount services only for telecommunications services" - Form 486 Block 4, Item 11(c). We contend that requiring applicants to certify non-compliance with CIPA regulations by a date certainly is overly burdensome and should not be reason for rejection of the application, as failure to check box 11 (c) would, by its absence indicate non-compliance with CIPA regulations.

Conclusion

Because of the precedent setting FCC decisions presented here and SLD's failure to timely process Forms 486, we believe the FCC has sufficient cause to grant this waiver request and restore E-Rate funding from July 1, 2001 through October 31, 2001.

Respectfully submitted this 28th day of January, 2002,

Lauretta C. Carter
Technology Resource Analyst

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